IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8458 OF 2006

Rajaram S. Gaikwad .... Petitioner

versus

Subhash Shankar Gaikwad ..... Respondent.

Mr. Sagar Joshi i/b Ms. Nayana V.Thatte for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 16TH JULY, 2007

P.C.;

1. The present petitioner claims to be the owner of the property which has been leased in favour of the respondent. The petiitoner filed a regular civil suit No.241/02 in the court of CJJD Daund against the respondent and claimed possession in respect of the suit land. Whereas the respondent had also filed a suit, prior in point of time to the suit filed by the petiitoner in the court of CJJD Daund against the petitioner and the relief claimed in the suit filed by the respondent is one for injunction, and both the suits were pending in different courts though at Daund. An application was moved by the respondent under section 10 of CPC for staying the proceedings in the suit instituted by the present petitioner, it being the suit instituted subsequent in point of time.

The stay application has been allowed and aggrevied thereby this writ petition has been filed.

2. The trial court, who has passed the impugned order, has categorically held that the issues in both the matters are directly and substantially same and being convinced that the matter falls within the ambit of section 10, stay has been granted. From the observations made in para 8 of the impuned order it does appear that both the suits are triable by CJJD but are presently assigned to two different courts. The learned counsel for the petitioner submits that if the suits are simulteneously tried the same would be in the interest of justice. The learned counsel for the petitioner seeks liberty to move the District Judge for trasfer of either of the suits to one court so that suits could be simulteneously tried. Though I reject the writ petition, I grant liberty to the petitioner to make an appropriate application seeking transfer of one of the suits so that both the suits could be tried by the same court. Writ petiiton is thus summarily dismissed. Liberty as prayed for is granted.

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